

JAN 18 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KURT DAVID ALLENSWORTH,

Petitioner - Appellant,

v.

ERNIE ROE, Warden,

Respondent - Appellee.

No. 07-55290

D.C. No. CV-02-06188-DOC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted January 14, 2008^{**}

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Kurt David Allensworth, a California state prisoner, appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 petition as time-barred. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253. We review de novo the

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

district court's dismissal of a petition for habeas corpus as untimely, *see Bryant v. Schrivo*, 499 F.3d 1056, 1059 (9th Cir. 2007), and we affirm.

Allensworth contends that he is entitled to tolling under 28 U.S.C. § 2244(d)(2). Because the delay between the denial of his first state habeas petition and the filing of his subsequent state habeas petition was not reasonable, we conclude that he is not entitled to "gap" tolling for this period. *See Evans v. Chavis*, 546 U.S. 189, 200-01 (2006) (concluding that an unjustified or unexplained delay of six months was presumptively unreasonable). Thus, we affirm the district court's determination of untimeliness.

AFFIRMED.